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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,402	08/30/2001	David H. Blount		6616
7590	01/15/2004			
David H. Blount 6728 Del Cerro Blvd. San Diego, CA 92120			EXAMINER YOON, TAE H	
			ART UNIT 1714	PAPER NUMBER

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,402

Applicant(s)

BLOUNT, DAVID H.

Examiner

Tae H Yoon

Art Unit

1714

db

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

Claim numbers 6-21 have been renumbered as 5-20 under Rule 126 since there is no claim 5.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20 (1-19 currently), drawn to a fertilizer composition, classified in class 524, subclass 100+.
- II. Claim 21 (20 currently), drawn to a partially hydrolyzed amino condensation compound, classified in class 524, subclass 812.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a fertilizer or an insecticide and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants and since the reaction product of Group I has a different chemical structure from that of Group II. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Blount on January 5, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant failed to provide how to obtain the recited partially hydrolyzed amino condensation compound adequately. For example, the structure $(-NHCNHN-)z$ recited at page 8 of the specification cannot be a part of polyaminocarbamate and valences of

atoms do not match. Also, the oxygen atom in $(\text{H}_4\text{N OOC-})_n$ has a penta-valence due to NH_4 and it should be in a salt form (ionic bonding).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 15 are improper since the claim must end with a period (.) and cannot have said period (.) other than at the end of claim. For example, see "(A). urea;".

The section (B) of claim 1 recites "isocyanuric acid and/or cyanic acid", however said "isocyanuric acid and/or cyanic acid" is not recited in section (A). Thus, it is confusing (see the instant claim 15 for clear language). Claim 1 is indefinite and confusing in not specifying amounts of components used since it is unclear with respect to its metes and bounds. Also, claims 3 and 4 recite "in an amount of 0 parts by weight" and thus improperly broaden the scope of claim 1. The recited "in an amount of 10 to 300 parts by weight" of claim 2 has little probative value absent the amount of (A), urea. The recited "derivatives" in claims 2 and 4 is indefinite, and improper Markush language is recited in claim 3 and a proper format is "--- consisting of A, B, C, ---- and Z" (only one "and" before the last specie is needed). The recited "oxides, carbonates, sulphates,

phosphates and borates" in claim 4 are indefinite in not specifying a particular counterpart such as metal or organic specie.

Claim 15 recites a reaction of a partially hydrolyzed amino condensation compound and component D, and an addition of component E, but the recited amounts of D and E include 0 parts by weight. Thus, it is unclear whether components D and E are present or not. The recited formulae in claims 16 and 17 are incorrect since the oxygen atom in $\text{OOC-})_n$ has a penta-valence due to NH_4 and the carbon atom in $\text{NHCH-})_z$ has tri-valence and said formulae lacks an antecedent basis in the specification. Also, it is unclear whether the recited formulae in claims 16 and 17 present the whole compound or a partial compound, and the general formula should include the whole compound, not a partial compound.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Blount (5,010,113).

The recited preamble has little probative value. Blount teaches the instant product in examples, and thus the invention lacks novelty.

Claims 1-5 and 7-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wagner et al (US 4,283,219).

Wagner et al teach the instant product and process thereof at col. 2, line 5 to col. 12, line 17 and col. 15, line 7 to col. 22, line 11. The instant compound B such as guanidines or dicyandiamine (col. 4, lines 11-12), compound D such as phosphoric acid (col. 10, lines 65-66) and filler E such as wood flour, cellulose or metal silicates or oxides (col. 11, line 54 to col. 12, line 17), and ammonium carbamate (col. 56, lines 37-45) are seen. Also, heating of urea inherently produces isocyanuric acid and/or cyanic acid which in turn react with the solid urea have not been melted.

Thus, the instant invention lacks novelty.

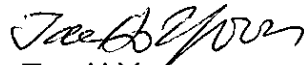
Claim 6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraph, set forth in this Office action, and if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

Art Unit: 1714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Tae H Yoon
Primary Examiner
Art Unit 1714

THY/January 6, 2004